



"An Employee Owned Company"

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May 9, 2000

Surface Transportation Board  
Office of the Secretary  
Case Control Unit  
Attn: STB Ex Parte No. 582 (Sub-No. 1)  
1925 K Street, N.W.  
Washington, DC 20423-0001

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Office of the Secretary

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PART OF  
Public Record



Dear Sir or Madam:

I am CEO of Twin Modal, Inc., and Intermodal Marketing Company (IMC) headquartered in Roseville, MN. I am writing to you with our comments on possible rules revisions for STB review of railroad mergers (STB Ex Parte No. 582 (Sub-No. 1)).

Our company serves the freight transportation needs of over 1300 small and medium sized shippers throughout North America by combining rail intermodal and local trucking services in a seamless service package. We have been a volume customer of the current class 1 railroads and/or their predecessor companies since 1977. In the 23 years of our existence, we've lived through numerous railroad mergers including CSX, NS, CP, BNSF, UP/SP and the Conrail split-up, to name a few. Today, our nation is on the verge of the final stage of railroad consolidations leading to potentially just 2 carriers serving the U.S. and Canada. This is a much different scenario than we faced with the mergers of the 1980's and with far greater risk for small shippers.

Unlike motor carrier service where new competitors enter the market and operate on public highways at will, the existing rail network is fixed and controlled for the most part by just 4 carriers. New entrants to the railroad market are not likely, given the implausible task of building their own right of way or buying it from one of the existing competitors. With little threat of new intra-modal competitors, the class 1 railroads have been able to leverage their exclusive networks to their advantage and at the cost of the shipping public.

The mergers of the recent past, especially the BNSF, UP/SP, and Conrail split up, have taught us well that the current rules for reviewing rail mergers are not sufficient and require modification. Small-to-medium sized IMC's and the shippers we serve, will continue to suffer tremendously if further railroad consolidation is allowed without some reasonable safeguards. To that end, I submit the following suggestions for modification of the railroad merger review rules, specifically with regard to rail intermodal shipping:

1. **The STB must prohibit merging railroads from implementing policy changes or contract changes which force or effect a consolidation of IMC contract holders.**

After the UP/SP merger, BNSF unilaterally imposed significant contract changes, including a 10-fold increase in its volume requirement, which forced approximately 65 % of its IMC's contract holders to merge, combine contracts or lose access to the BNSF network. Norfolk Southern similarly announced, since its acquisition of part of Conrail, a 4-fold increase in its volume requirement with IMC contract holders. Most recently, CSX has indicated it may increase volume requirements as well.

Contract access to each railroad is not enough. The class 1 railroads have pricing and equipment allocation policies which favor the largest IMC's and which small IMC's cannot secure, even when competing for the same shipper business to move on the same railroad. By favoring the largest IMC's, these railroad policies have the effect of consolidating intermodal shippers among a handful of IMC's and stifling competition.

These discriminatory railroad contract and policy changes also result in fewer IMC's able to compete for a shipper's business. In 1980 there were several hundred IMC's and less than 100 licensed property brokers. Today there are over 9000 property brokers but less than 70 IMC's of any significance. Why have the number of competitors in every other transportation mode increased while IMC's have been reduced?

2. **Railroads should be prohibited from imposing any bonding requirement on any IMC customer who doesn't pose an unreasonably high credit risk.** BNSF requires small and medium sized IMC contract holders to post a \$250,000 bond, regardless of the credit history of that IMC. Our company has had a flawless credit history with BNSF and its predecessor companies since 1977 yet they still require us to post a bond. In addition, they have shortened our credit terms from 14 days to 7 and require automated electronic funds payment. Their credit risk with our company is negligible and quite manageable without a bond. To secure a \$250,000 bond, we had to provide our bank with an equal amount of collateral which reduced our available working capital. Our company manages its credit risk with each customer through prudent credit management techniques as employed in every other industry. Why can't a railroad of \$6 billion in revenue do the same? If we were required to post a \$250,000 bond for each of the four largest railroads, our company would be out of working capital and out of business.
3. **Railroad intermodal contract volume requirements and liquidated damages provisions should be returned to the levels in effect in 1996, just prior to the UPSP merger.** Most of the negative contract changes we've experienced with railroads were imposed after the UP/SP merger. Current volume requirements are arbitrary and only intended to eliminate small IMC's or make it unreasonably difficult for them to work with the railroad. The levels required in 1996, while not perfect, were far fairer than those in effect today.
4. **The merging railroads should be required to "grandfather" all existing pre-merger contracts.** The current 4 largest Class 1 railroads comprise over 90% of the rail network in the United States. This network is essentially a national asset to which public access should be protected. Without competitive contract access to each

railroad, we cannot effectively serve our customers with the optimum routing for their freight. IMC's, regardless of size, must be assured of competitive access to the entire national rail network.

5. **The STB should be required to review intermodal railroad contracts upon request and provide a timely and efficient appeal process at reasonable cost. Furthermore, the STB should exercise injunctive relief to protect the IMC during the appeal process.** As railroads have merged, small shippers and IMC's have become less important to them and contract terms have become increasingly one-sided. Some railroads have even told us they want to deal with fewer customers. When negotiating with a railroad today, they *tell* you what the contract terms are and there is no negotiation. We, in turn, have nowhere to turn for help. Small shippers need an effective and affordable forum to appeal to for relief. The STB currently views contract disputes as commercial issues to be worked out between the parties which is possible only when each party is willing to negotiate. Any appeal process must also be affordable. A \$50,000 filing fee is out of reach for most small and medium sized companies.

As an IMC, we compete vigorously with other IMC's for shippers' business. If we can't access part of the national rail network, our options for serving our customers are reduced and we lose our ability to compete. If enough IMC's are forced out of the market, there will be far fewer companies competing for shipper traffic and with less incentive to create new options for those shippers. In the end, shippers will pay more for intermodal service and they will have fewer options.

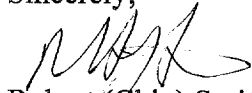
Contrary to popular belief, rail-to-rail competition is an intermodal issue. With the cost savings of rail intermodal service over motor carrier service approaching 15% in many traffic lanes, motor carrier service is not always an economical alternative. Captive intermodal shippers do exist and Many parts of the country are served by only one intermodal rail carrier.

Small shippers and IMC's need to be assured of competitive access to our national rail network. Our nation's ability to compete globally depends on it.

Thank you for the opportunity to offer our comments on this issue.

I declare under penalty of perjury that the forgoing is true and correct. Executed on this 8<sup>th</sup> day of May, 2000.

Sincerely,



Robert (Chip) Smith  
President/CEO